

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	MB Docket No. 22-76
)	NAL/Acct. No. MB-202241410006
The Marion Education Exchange)	FRN: 0023109846
)	
For Renewal of License for)	Facility ID No. 193826
Station WWGH-LP)	File No. 0000115702
Marion, Ohio)	

ORDER

Adopted: June 24, 2022**Released: June 24, 2022**

1. The above-captioned proceeding was initiated by the FCC's Media Bureau on February 23, 2022, by Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture.¹ The question to be resolved is whether it is in the public interest to grant the application for renewal filed by The Marion Education Exchange (MEE), licensee of Station WWGH-LP, Marion Ohio, in light of inconsistencies in MEE's representations as to the composition of its Board of Directors. In particular, MEE in 2019 identified an individual as a member of its Board, with 20 percent voting rights, who had died in 2016. Moreover, it appeared that MEE had misidentified other Board members.² To clarify these discrepancies, the Media Bureau sent to Board President Shawn Craft a letter of inquiry on December 8, 2020, and directed that a response be submitted by January 7, 2021. Neither Mr. Craft nor any other representative of MEE responded by the deadline, so on February 12, 2021, the renewal application was dismissed, the license was cancelled, and MEE was informed that its authority to operate had been terminated.³ On February 16, 2021, MEE filed a pleading that served as both a petition for reconsideration and a response to the letter of inquiry. The Media Bureau accordingly reinstated the renewal application and the license, citing section 307(c)(3) of the Communications Act, and sent a second and then a third letter of inquiry.⁴ Finding MEE's responses lacking, the Media Bureau designated this matter for hearing to resolve substantial and material questions of fact, including whether MEE violated the Commission's rules when it failed to fully and completely respond to inquiries from Commission staff, whether it made misrepresentations to and/or lacked candor with the Commission, and whether it improperly consummated a *pro forma* transfer of control without notifying the Commission.⁵

2. On March 14, 2022, Attorney George M. Wolfe filed a Notice of Appearance on behalf of MEE.⁶ On April 20, 2022, Attorney Wolfe appeared at the initial status conference in this matter representing MEE and, at MEE's direction, submitted responses to requests for admission that had been

¹ *The Marion Education Exchange*, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture, MB Docket No. 22-76, DA 22-187 (MB Feb. 23, 2022) (*MEE HDO*).

² *Id.* at paras. 2-4.

³ *Id.* at paras. 6-7.

⁴ *Id.* at paras. 7-14.

⁵ *Id.* at para. 39.

⁶ *The Marion Education Exchange*, Notice of Appearance, MB Docket No. 22-76 (filed Mar. 14, 2022).

sought by the FCC's Enforcement Bureau.⁷ On April 29, 2022, the Enforcement Bureau served on MEE a request for the production of documents and a set of interrogatories.⁸ Pursuant to the Commission's rules, and as specified by the filings, a response to the document request was due on May 9, 2022, and a response to the interrogatories was due on May 13, 2022.⁹ When MEE did not respond to the document request, the Enforcement Bureau contacted Mr. Wolfe, who indicated to the Bureau on May 10 that he intended to withdraw as MEE's counsel and that the Bureau's document request and interrogatories had been forwarded to Shawn Craft.¹⁰ Mr. Wolfe filed an unopposed motion to withdraw as counsel for MEE on May 16, indicating that MEE "has failed to cooperate with counsel and is no longer communicating."¹¹

3. The Presiding Judge granted Mr. Wolfe's motion to withdraw on May 31, 2022, provided that he immediately notify MEE of its filing obligations and that he submit a statement in the record indicating when and how he provided that notice and identifying the name, mailing address, and email address of the MEE representative to whom he sent it.¹² The attorney filed the required notice that same day, May 31, 2022, and identified Shawn Craft as MEE's representative.¹³ The *May 31 Order* also granted the Enforcement Bureau's motion to compel responses to its requests for discovery, and therefore directed MEE to respond to the outstanding document requests and interrogatories within 20 days. The *May 31 Order* also ordered that, "A legal representative of MEE shall file a Notice of Appearance in this proceeding pursuant to section 1.221(c) of the Commission's rules" within 20 days.¹⁴

4. On Sunday, June 5, 2022, Shawn Craft, on behalf of MEE, sent separate emails to the FCC's Chairwoman and to the Presiding Judge in this case. He alleges that MEE did not receive correspondence from its former attorney and only found out "from the media on May 31" that the attorney had withdrawn from the case. He submits that, as a nonprofit entity operating a 100-watt low-power FM (LPFM) station, MEE cannot afford to retain an attorney and requests "a court appointed attorney who would represent us at no cost." Mr. Craft also posits that the individual who challenged its renewal application has ties to a competing LPFM station and acted with malice to get WWGH-LP taken off the air. Citing ill health of the station's program director and a board member of MEE, Mr. Craft seeks a 90-day extension, presumably of the deadline to respond to the May 31 Order. He expresses MEE's desire to "come into compliance with the FCC" and asks that this proceeding be discontinued.¹⁵

⁷ *The Marion Education Exchange*, Order Summarizing Initial Conference, MB Docket No. 22-76, FCC 22M-11 (ALJ Apr. 21, 2022) (*Order Summarizing Initial Conference*); *The Marion Education Exchange*, Answers to First Request for Admissions, MB Docket No. 22-76 (filed Apr. 20, 2022).

⁸ Enforcement Bureau's First Request for Production of Documents and Things to The Marion Education Exchange, MB Docket No. 22-76 (filed Apr. 29, 2022); Enforcement Bureau's First Set of Interrogatories to The Marion Education Exchange, MB Docket No. 22-76 (filed Apr. 29, 2022).

⁹ See 47 CFR § 1.325(a)(2) (10 days to respond to document requests); 47 CFR § 1.323(b) (14 days to respond to interrogatories).

¹⁰ Enforcement Bureau's Opposition to Request for Extension of Time, MB Docket No. 22-76 (filed June 10, 2022) (EB Opposition) at Exh. B (email dated May 10, 2022, from Victoria Michaels, Wolfe Legal Services, to Pamela Kane, Enforcement Bureau).

¹¹ Motion of George M. Wolfe to Withdraw as Counsel, MB Docket No. 22-76 (filed May 16, 2022). The motion states that MEE "will be made aware of all upcoming deadlines."

¹² *The Marion Education Exchange*, Order, MB Docket No. 22-76, FCC 22M-17 (ALJ May 31, 2022) (*May 31 Order*) at para. 4.

¹³ George M. Wolfe, Notice, MB Docket No. 22-76 (filed May 31, 2022).

¹⁴ *May 31 Order* at para. 2.

¹⁵ Email from Shawn Craft, Board President, The Marion Education Exchange, to Jane Halprin, Presiding Judge, FCC Office of Administrative Law Judges (June 5, 2022, 18:26 PM EDT). An identical email, sent to Chairwoman

5. On June 10, 2022, the FCC's Enforcement Bureau filed an opposition to MEE's request for a 90-day extension. EB contends that MEE's email violated the Commission's *ex parte* rules, and questions Mr. Craft's assertion that MEE did not have notice of the procedural deadlines in this case. EB notes that MEE and its attorney had previously been in communication with respect to EB's Request for Admissions, and points out that the attorney's paralegal indicated on May 10 that she had forwarded the Bureau's request for documents and interrogatories to Mr. Craft. EB also submits that in the notice required by the *May 31 Order*, MEE's counsel stated that he had forwarded to MEE on May 16 his motion to withdraw, the Enforcement Bureau's motion to compel responses to its document requests and interrogatories, and the order establishing the schedule for this proceeding. Further, EB notes, the attorney indicated that on May 31 he again sent MEE copies of those items, as well as the Presiding Judge's Order of May 31, and he identified one of the email addresses for MEE as shawndog29@gmail.com, which is the same address from which Mr. Craft sent his email of June 5 and is the address included in the renewal application that is the subject of this proceeding.¹⁶ In addition, EB contends that the health issues of the station's program director and one of MEE's board members should not prevent Mr. Craft, as Board President, from responding to its outstanding discovery requests, and points out that the Commission is not in a position to provide MEE a "court appointed attorney."¹⁷

6. In designating this matter for hearing, the Media Bureau indicated that MEE's actions "suggest an indifference to the Commission's regulatory authority that is patently inconsistent with the responsibilities of a licensee."¹⁸ MEE's limited participation in this proceeding thus far has done little to counter that impression. The first two orders issued by the Presiding Judge in this matter specified that parties "are expected to be fully cognizant of Part 1 of the Commission's rules concerning Practice and Procedure, 47 CFR Part 1, Subparts A and B."¹⁹ Apart from the general interest in ensuring that licensees comply with the Commission's rules and in orderly conduct of proceedings, it is incumbent upon a licensee to evidence a familiarity with the orders issued in proceedings to which it is a party.²⁰ Had Mr. Craft reviewed the *MEE HDO* and the orders of the Presiding Judge, which are available in the public record of this proceeding, he would have been aware that "*ex parte* presentations to or from Commission decision-making staff, including the presiding officer and her staff and Bureau staff, are prohibited," except as provided by the Commission's rules.²¹ He would also have known that all pleadings must be filed using the Commission's Electronic Comment Filing System (ECFS).²² The Enforcement Bureau is correct that the June 5 email was a prohibited *ex parte* communication in violation of section 1.1208 of the Commission's rules, 47 CFR § 1.1208. Because the Enforcement Bureau was expeditiously made aware of the email and had an opportunity to respond, however, the Presiding Judge will excuse Mr.

Jessica Rosenworcel on June 5 and forwarded to the Enforcement Bureau on June 6, is available as Exh. A to the EB Opposition.

¹⁶ EB Opposition at 2-3.

¹⁷ *Id.* at 4.

¹⁸ *MEE HDO*. at para. 20.

¹⁹ *The Marion Education Exchange*, Initial Case Order, MB Docket No. 22-76, FCC 22M-07 (ALJ Mar. 18, 2022) (*Initial Case Order*) at para. 6; *Order Summarizing Initial Conference* at para. 7.

²⁰ *See, e.g., Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419, 419 (1986) (*Hillebrand*) ("effective and expeditious dispatch of the Commission's business is, in itself, an integral part of the public interest" in licensing proceedings); *Triad Broadcasting, Inc.*, 96 F.C.C.2d 1235, 1242-44 (1984) (*Triad*) (stating that licensee has obligation to know details of and to supervise interaction of its employees and attorneys with the Commission, and discussing multiple Commission decisions finding licensees responsible for acts of attorney or actions taken upon erroneous legal advice).

²¹ *MEE HDO* at para. 35.

²² *Id.* at para. 36; *Initial Case Order* at para. 4; *Order Summarizing Initial Conference* at para. 5.

Craft's mistake in this one instance and allow the June 5 email into the record of this proceeding. The Presiding Judge will not, however, consider Mr. Craft's follow-up email of June 11.²³ While Mr. Craft did send that communication to the Enforcement Bureau, he did not file it in ECFS, and the Commission's rules do not allow for replies to oppositions.²⁴

7. Mr. Craft claims that MEE did not receive emails about this matter sent by its attorney, that nobody from the attorney's office ever called him, and that MEE "found out from the media on May 31st" that the attorney had withdrawn from the case. Perhaps Mr. Craft did not read the emails, but the Presiding Judge does not find it credible that he did not receive them. The email identified for official correspondence in MEE's renewal application is shawndog29@gmail.com. That is the email address that the Media Bureau used to communicate with MEE, yet the Media Bureau received no response to its first letter of inquiry.²⁵ At the start of this hearing proceeding, MEE was in sufficient communication with counsel to enable him to respond to the requests for admission filed by the Enforcement Bureau, and only thereafter did that communication cease.²⁶ In the notice required by the *May 31 Order*, MEE's counsel stated that he had on May 16, 2022, transmitted to MEE copies of his motion to withdraw as counsel, the Enforcement Bureau's motion to compel, and the *Order Summarizing Initial Conference*. The attorney provided shawndog29@gmail.com as one of two email addresses for Mr. Craft as MEE's representative. Even if he had not used that email, his paralegal indicated to the Enforcement Bureau on May 10, 2022, that, "I forwarded your request for documents and interrogatories to Mr. Craft. I then sent a follow up text informing him that he had the email."²⁷ Further evidence that Mr. Craft might not have expeditiously read his email is his statement that he first learned from the media on May 31 that his attorney had withdrawn. In addition to his being informed of that by the attorney on May 16 and again on May 31, this office sent a copy of the *May 31 Order* directly to shawndog29@gmail.com at 12:18 PM on May 31, shortly after it was released.

8. Prior to the *May 31 Order*, MEE missed all filing deadlines in this proceeding from the time its counsel filed his notice of appearance.²⁸ The Presiding Judge emphasized at that time that "[f]ailure to adhere to Commission hearing regulations and procedures, including failure to meet filing deadlines or respond to orders of the Presiding Judge, could lead to dismissal of this proceeding with prejudice and, in turn, dismissal of the licensee's application for renewal, such that MEE would lose its FCC license."²⁹ It is well-settled that an FCC licensee bears the ultimate responsibility for adherence to the Commission's rules, and may not escape that responsibility by blaming failures on an independent contractor such as hired counsel.³⁰ Nor is a licensee excused from its obligations by virtue of being low-

²³ See Enforcement Bureau's Motion to Strike Unauthorized Pleading, MB Docket No. 22-76 (filed June 13, 2022), Exh. A.

²⁴ 47 CFR § 1.294(b).

²⁵ *MEE HDO* at para. 7.

²⁶ The Marion Education Exchange, Answers to First Request for Admissions, MB Docket No. 22-76 (filed Apr. 20, 2022).

²⁷ EB Motion to Compel at Exh. D.

²⁸ As noted at the initial status conference, MEE did not file the proposed hearing schedule required by the *Initial Case Order*, nor did it submit a timely response to the Enforcement Bureau's Request for Admissions. *Order Summarizing Initial Conference* at para. 3.

²⁹ *Id.*

³⁰ See, e.g., *Triad*, 96 F.C.C.2d at 1242-44; *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385 (2018) at para. 6 ("it is axiomatic that a licensee is directly responsible for compliance with the Commission's rules and cannot evade responsibility by attributing the misconduct to a station agent or employee.")

power and noncommercial, as Mr. Craft implies,³¹ nor by illness of an employee or volunteer.³² In this instance, MEE is seeking action by the Commission --renewal of its FCC license -- and thus bears the burden of proof in this proceeding.³³ As such, it is incumbent upon MEE to be particularly vigilant with respect to procedural deadlines.³⁴ Moreover, the informal objector's motivation is irrelevant; the Media Bureau independently investigated his allegations and found that some, but not all, warranted further inquiry. Indeed, the behavior that engendered this hearing proceeding appears to stem more from MEE's unsatisfactory responses to the Media Bureau's letters of inquiry than from the informal objector's allegations. The Media Bureau gave MEE several opportunities to fully respond to its inquiries about the composition of its Board of Directors, but when MEE gave it inconsistent information and then appeared to attempt to conceal its previous misrepresentations, the Media Bureau was not able to make the finding required by the Communications Act that renewal of MEE's license is in the public interest. As a result, this matter was designated for administrative hearing, pursuant to section 309(e) of the Communications Act, 47 U.S.C. § 309(e).

9. As detailed above, Mr. Craft sought a 90-day filing extension in his June 5 email of the deadline for responding to the *May 31 Order*, which was June 21, 2022.³⁵ Nonetheless, before that deadline passed, Mr. Craft filed in the record of this proceeding pleadings intended to respond to the Enforcement Bureau's document requests and interrogatories, and submitted a notice indicating that MEE is prepared to appear at the hearing and present evidence.³⁶ Without opining on the substance of the responses, the Presiding Judge recognizes this as a good-faith attempt by MEE to comply with the *May 31 Order*. It remains problematic, however, that MEE is unrepresented by legal counsel. MEE was permitted, consistent with the Commission's rules, to engage with the Media Bureau without the benefit of counsel but failed to provide satisfactory responses to multiple inquiries. Now that the matter has been designated for hearing, the Commission's rules do not permit MEE, as a corporate entity, to proceed without counsel unless authorized by the Presiding Judge.³⁷ Mr. Craft's June 5 email asks that the Commission appoint an attorney to represent MEE free of charge; the Commission does not provide attorneys to represent parties in administrative hearings. Mr. Craft states in his email that retaining a lawyer will bankrupt his station. Although that statement is contradicted by the fact that MEE initially hired counsel to represent it in this proceeding, one of the stated reasons that MEE's original attorney withdrew was lack of payment. Taken together, these circumstances raise serious questions about the extent of MEE's intent, at least at the outset, to prosecute this case.³⁸ Moreover, it is not clear that MEE

³¹ See, e.g., *Community Radio of Decorah, Postville, and Northeast Iowa*, 31 FCC Rcd 12180 (2016) (directs Media Bureau to conduct further investigation of LPFM permittee's alleged misrepresentations to the agency).

³² See, e.g., *Whidbey Island Center for the Arts*, 25 FCC Rcd 8204 (MB-AD 2010) (low power licensee responsible for error resulting from illness of volunteer); *Range Paging, Inc.*, Forfeiture Order, DA 21-950, 2021 WL 3423961 (MB-AD 2021) (licensee responsible for act of ill employee).

³³ *MEE HDO* at para. 45; see also 47 U.S.C. § 309(e).

³⁴ See, e.g., *Hillebrand*, 1 FCC Rcd 419, 419 (1986) (citing *Vue-Metrics, Inc.*, 69 F.C.C.2d 1058 (1978)) ("prosecution of an application means timely compliance with procedural and substantive rules, including ALJs' orders").

³⁵ The order directed MEE to file within 20 days of May 31, 2022. As June 20 was a federal holiday, the required submissions were due by June 21, 2022.

³⁶ Shawn Craft, The Marion Education Exchange, Documents Requested, MB Docket No. 22-76 (filed June 20, 2022); Shawn Craft, The Marion Education Exchange, Answers to Interrogatories, MB Docket No. 22-76 (filed June 20, 2022); Shawn Craft, The Marion Education Exchange, Notice of Appearance, MB Docket No. 22-76 (filed June 20, 2022).

³⁷ 47 CFR § 1.21(d).

³⁸ See EB Opposition at Exh. B (email dated May 10, 2022, from Victoria Michaels, Wolfe Legal Services, to Pamela Kane, Enforcement Bureau, stating, "In addition to the lack of communication, the client hasn't made any effort to pay a retainer").

has explored whether an attorney might take the case *pro bono* considering the company's nonprofit status. In light of the course of events thus far in this proceeding, in particular the repeated failure of MEE to adhere to filing deadlines and to familiarize itself with Commission rules and procedures, the Presiding Judge does not authorize MEE to proceed without legal counsel.³⁹

10. Mr. Craft's email expresses a desire to "come into compliance with the FCC." MEE can begin by treating this hearing with requisite seriousness. The Presiding Judge would be justified in dismissing this proceeding due to MEE's failure to prosecute its application, particularly since MEE bears the burden of proof in this proceeding. That would require MEE to cease operations. Given the seriousness of that result, however, the Presiding Judge is willing to provide MEE more time to engage new counsel. Therefore, in addition to the time already afforded, MEE is hereby granted 20 days from the date of this order for legal counsel to enter an appearance in this proceeding on its behalf. Discovery in this matter is tolled, to resume on the date the required notice of appearance is filed.

11. Accordingly, **IT IS ORDERED** that The Marion Education Exchange **SHALL RETAIN** an attorney authorized to practice before the Commission⁴⁰ to represent it and **SHALL CAUSE** that attorney to file a Notice of Appearance in this proceeding pursuant to section 1.221(c) of the Commission's rules, 47 CFR § 1.221(c), **WITHIN 20 DAYS** of the release date of this order.

12. **IT IS FURTHER ORDERED** that discovery in this proceeding **IS TOLLED** until the required Notice of Appearance referenced above is filed; applicable filing deadlines shall be counted from the day that filing is submitted.

13. **IT IS FURTHER ORDERED** that the relief sought in the email from Shawn Craft, The Marion Education Exchange, to Presiding Judge Jane Halprin, dated June 5, 2022, **IS DENIED**.

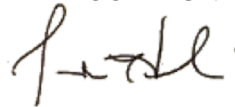
14. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Motion to Strike Unauthorized Pleading, filed June 13, 2022, **IS GRANTED**.

15. **IT IS FURTHER ORDERED** that the parties are reminded that all written submissions in this proceeding shall be filed using the Commission's Electronic Comment Filing System (ECFS) by 11:59 PM Eastern Time on the filing date.

16. **IT IS FURTHER ORDERED** that the parties are reminded that they shall serve all filings on each other via electronic mail.⁴¹

17. **IT IS FURTHER ORDERED** that the parties are reminded that they are expected to be fully cognizant of Part 1 of the Commission's rules concerning practice and procedure, 47 CFR Part 1, Subparts A and B.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge

³⁹ The pleadings responsive to the outstanding document requests and interrogatories submitted by MEE on June 20 are accepted for filing despite the absence of legal representation.

⁴⁰ See 47 CFR § 1.23.

⁴¹ Courtesy copies of motions, pleadings, and other submissions are to be emailed to the Presiding Judge (Jane.Halprin@fcc.gov) and Special Counsel John B. Adams (JohnB.Adams@fcc.gov).